OUTGOING AIRGRAM

DEPARTMENT OF STATE DIVISION OF COMMUNICATIONS AND RECORDS TELEGRAPH BRANCH

83

Declassified
Nov. 19, 1981
John R. Crook, L/EB

~~RESTRICTED~~ ~~SECURITY INFORMATION~~ NSC/MR

REVIEWED BY Fantaney DATE 3/19/82

83
ORIGIN:E
INFO
L
FE
DCL
OLI
CIA

AMEMBASSY,

TOKYO.

A-736 ~~March 20, 1953~~

COMM
MSA
TAR
TR

FCN Treaty. ~~UR 3032.~~

This will confirm Dept's telegraphic acceptance of all revisions reported, except the insertion of the words "or company" before the word "domiciled" in the added sentence of Protocol para. 4; and will elaborate on the Dept's objection to this insertion.

mjf

There is no general federal incorporation law; and virtually all American business corporations operate under charters granted by the States (including, of course, the Territories and the District of Columbia). Therefore, the effect of the proposed insertion would be to add to the "place-of-charter" test the further test of where the corporation is domiciled. It has been the uniform policy of the Department since the war to identify a corporation, for treaty purposes, solely by "place-of-charter", and avoid the complications that would arise by the superimposition of an added test, such as "domicile" (which, in any event, does not appear to be a precise term in reference to a corporation). This policy is reflected in all treaties negotiated since 1945. It may be seen in Article XXII, paras. 3 and 4, of the Japanese draft, and in para. 1(b) of Article IX of Dept's original proposals (a clause since deleted for reasons not involving the issue now in question), all of which have their counterparts in other signed treaties. The Dept deems this to be the sound juridical position (the exception to it being para. 1(e) of Art. XXI).

National banks are, of course, organized under federal law. These, however, plus a few corporations chartered by special act for some special public purpose (e.g., the Federal Deposit Insurance Corporation, Reconstruction Finance Corporation) are the only exceptions that come readily to

DEPARTMENT OF STATE
L/T
MAR 24 1953
TREATY BRANCH
OFFICE OF THE LEGAL ADVISER

Declassified

~~RESTRICTED~~ ~~SECURITY INFORMATION~~

Declassified
Nov. 19, 1981

~~RESTRICTED - SECURITY INFORMATION~~

Tokyo
A-736

mind to the general rule that American corporations, at least those of the business variety, operate under State charter. Therefore, it having already been agreed during negotiation that American banks (whether federally or state chartered) operating in Japan are not to have their established rights impaired, the Department fails to understand the reason given for the revision requested by the Japanese.

Finally, apart from the foregoing consideration, in case federally-chartered private business corporations of concern to the Treaty actually did exist, it would appear inequitable for their treaty rights to depend on what a State law happened to provide. Rather, in that hypothesis, the proper test would be what the federal law provided.

With rectification of the objectionable association of domicile with the status of companies, in the second sentence of Protocol 4, the draft text appears to be in good shape, on the basis of all existing information; and the Dept trusts that translation, engrossment and other final preparations for signature proceed smoothly.

DULLES

EDT:CP:HWalker:hs
5/19/53

L/E

Declassified

~~RESTRICTED - SECURITY INFORMATION~~